BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL BANGALORE.

Dated 26th day of November 1970.

Sri S. T. Kulkarni, B.A. (Hons) LL.B. *Presiding Officer*:

Present :

Complaint No. 2 of 1970

in A. I. D. No. 32/1967

Complainant :

Sri Narasaiah, Watchman, P. S. S. K. Ltd., C/o Sri M. L. Nagappa, M. C. Road, Mandya.

Vs.

Opposite Party :

The Management of Pandavapura Sahakare Sakkare Karkhane Ltd., Pandavapura.

Appearances

For the Complainant:—Sri N. L. Nagappa, Secretary, P.S.S.K. Employees, Association, Mandya.

For the Opposite Party:—Sri M. Arya Mitra, Managing Director, P.S.S.K. Ltd., Pandavapura-R. S.

AWARD.

This is a Complaint filed by the Complainant under Sec. 33-A of the Industrial Disputes Act, 1947, praying for setting aside the order of the Opposite Party Management dated 28th May 1970 to the effect that he (Complainant) had lost his lien on his appointment, and for reinstating him in his former post with continuity of service and also with all other consequential benefits, together with costs and such other reliefs as the Tribunal might think proper.

2. The Complainant alleges that he was an employee of the Opposite Party Management since 1959, and he had discharged his duties honestly and diligently till he was served with Memo dated 28th May 1970 stating that he (Complainant) had lost his

lien his appointment. He further alleges that he was on sick leave from 14th May 1970 to 18th May 1970 as he was suffering from chest pain, and he attended the work in the factory on 19th May 1970 as he felt some what better, and as a result thereof his chest pain increased, and he could not attended the factory on 20th May 1970, and hence he sent an application requesting for sick leave along with a medical certificate with one Sri Pasha, who was working as a typist in the General Manager's office. He also alleges that he did not receive any reply to his leave application, and instead he received a memo dated 28th May 1970 stating that he had lost his lien on his appointment from 20th May 1970, and that after taking rest for 10 days as advised by the Doctor and also after availing of the weekly off day on 30th May 1970, he went to the factory on 31st May 1970 to report duty, and on that occasion the Superintendent, Watch and Ward Department directed that he (Complainant) should not be allowed inside the factory as his services had been terminated. He further alleges that he gave a representation to the Managing Director on the next day *i.e.* on 1st June 1970 bringing to his notice all the facts and circumstances and he did not receive and reply to his representation, and that the termination of his services was in contravention of the provisions of Sec 31 (2) of the I. D. Act, as an Industrial dispute in A. I D. No. 32/1967 was pending before this Tribunal by about that time, and further as the law requires that during the pendency of such a dispute any alteration in the conditions of service of an employee should not be made except as provided in Sec. 33 (2) of the Act. He also alleges that the action taken by the Management against him was not in accordance with its Standing Orders, and it was also against the principles of natural Justice, as it had failed to conduct an enquiry against him and also to consider the medical certificate sent by him before issuing the Memo dated 28th May 1970, and hence he had to file this Complaint for the reliefs mentioned in para 1 above.

3. The Opposite Party has filed its objection statement on 13th July 1970 to the effect that the Complainant was not an employee in its factory from the year 1959 as alleged by him, and he was working as a Watchman there since 17th August 1965 and it was not true that he was on sick from 14th May 1970 to 18th May 1970, and it (Opposite Party) was also not aware whether he (Complainant) was unwell and was suffering from chest pain by about that time. It further contends that it was not aware of any leave application or medical certificate alleged to have been

sent through one Sri Pasha, and also about the allegations in paras 1, 2, 4 to 8 and 10 to 13 of the complaint petition, and the Complainant was put to the strict proof about the same. It also contends that it was a fact that it had issued the memo dated 28th May 1970 to the Complainant, and that the complainant was not legally tenable as it was a clear case of automatic termination of appointment as per Standing Order No. 14 (3), and it was not a case of discharge or dismissal from service by way of punishment during the pendency of an Industrial dispute, and the Complainant was further not a workman concerned in the main dispute pending before this Tribunal in A. I. D. No. 32/67, and as such this complaint was not legally maintainable in law, and the provisions of Section 33 (2) of the I. D. Act, were also not attracted, and hence the complaint may be dismissed with costs.

4. After the objection statement of the Opposite Party, the Complainant has put in his reply on 22nd July 1970 reaffirming all the averments made in the complaint petition, and denying the statements to the contrary made by the Opposite Party.

5. In view of the contentions of both of the parties, the following issues were settled on 4th August 1970 and set down for hearing:—

1. Whether the action of the Management in terminating the services of the Complainant is not in accordance with the Standing Orders?
2. Whether the said action violates the principles of natural justice?
3. Whether the Complainant proves that he sent a leave application as contended by him?
4. Whether there is automatic termination as pleaded by Opposite Party?
5. What reliefs to Complainant?
6. My finding about these issues are:—
   (1) It is in accordance with Standing Orders.
   (2) No.
   (3) No.
   (4) Yes.
   (5) As per final order below:"

Reasons.

7. On behalf the Complainant, two witnesses (CWS 1 and 2) were examined and the documents at Exhibits C1 to C5 were got marked while on behalf of the Opposite Party Management only one witness Lt. M. R. Jagatap, the Security Officer of the Opposite Party factory, was examined and the documents at Exhibits 01 to 06 were also got marked. Out of two winesses examined on behalf of the Complainant, CW2 Narasiah is the Complainant himself, while CW1 Syed Ahamed Pasha is a Steno-typist attached to the General Manager of the factory. I have now to record my findings on issues Nos. 1 to 5 in the light of the oral and documentary evidence produced on behalf of both the parties.

8. *Issue No. 3:* According to the evidence of the complainant Narasiah (CW2) he was on leave from 14th to 18th of May 1970, and he had given an application (Ext. 03) in that behalf to the General Manager, and he reurned to duty on 19th May 1970 for the second shift, and while he was on duty on that day he began to have chest pain and he could not attend duty on the next day (20th May 1970) because of this trouble, and on that very day he got himself treated as an out-door patient in the T. B. Hospital Mandya, where his X-Ray photo was taken. He further states that he sent a leave application on 25th May 1970 as per the copy at Ext. C3, through CW-1 who is a Steno-typist in the office of the General Manager, by handing over the same to him at Mandya Railway Station. He further states that he could nor himself present this application to the General Manager as he was unable to go to the factory because of the said illness. The evidence of CW-1 Ahamed Pasha is to the effect that he had received a leave application together with a medical certificate (which were the originals of Exhibits. C3 and C 4 produced in this case) from the Complainant Narasaiah on 25th May 1970, and that he placed the same on the General Manager's table along with the other tappal for that day. As the Opposite party is seriously disputing about the receipt of this leave application from the Complainant, the evidence given by CWs 1 and 2 in this respect shall have to be examined more critically and in greater details.

9. It is stated by CWs 1 and 2 that the alleged leave application dated 25th May 1970 was received by CW-1 from CW 2 at Mandya Railway Station for being presented before the General Manager. Even if it is supposed for a while that it was possible for CW 1 to receive leave letters of this kind on behalf of the General

Manager as his Stenographer, he would be justified in receiving the same only during office hours and that too in the office itself, and not at any time and at a place like the Railway Station etc., and I think that he has gone rather out of the way in receiving it at Mandya Railway Station. CW-1 Syed Ahamed Pasha himself admits in his cross examination that he was not in bounds in receiving the leave application from the Complainant near the Railway Station. Moreover, if at all he thought that there was no objection to receive this application at the Railway Station. it was, his duty to explain to the General Manager about the circumstances under which he did so. But he admits in cross examination that he did not inform the General Manager in this behalf. Besides, he has gone to the length of stating that the leave application and the medical certificate received by him from the Complainant were the originals of Exhibits C3 and C4 which are alleged to be copies thereof produced by him (Complainant) in this case. It is really difficult to understand as to how he (CW 1) is able to state only from his memory after a lapse of more than 2½ months that the leave application and the medical certificate which are alleged to have been received by him from the Complainant on 25th May 1970 were the originals of Exhibits C3 and C4 It is also interesting to note that CW-I stated at first in his cross examination that he did not read the contents of these documents (Aplication and Medical certificate) at any time between their handing over to him by the Complainant at Mandya, and his handing them over to the attender in the General Manager's office, and that he did not read the contents thereof at any time thereafter also. But he subsquently stated that he read their contents at the time when they were received back by him from the General Manager's office for being sent to the Watch & Ward Section and until that time he did not know that a leave application along with medical cettificate had been handed over by the Complainant to him. He further stated that he could not say for certain that what the General Manager had sent for despatch to Watch and Ward was the very application with the certificate attached, which the Complainant had given to him. This last answer given by him would go to show that he is not quite sure whether what is alleged to have been read by him, as stated above, was the same as the application with medical certificate, which had been handed over by the Complainant to him. Moreover, even supposing for a while that he had read these documents on the occasion mentioned above, it would not normally be possible for him to remember about the contents thereof on a subsequent

occation, particularly as so many letters and outher documents would be passing through his hands every day. Under these circumstances, I think that it would not be possible to attach much importance to the evidence of CW-1 to the effect that the originals of Exhibits C3 and C4 had been handed over by the Complainant to him on 25th May 1970, and that the same had been sent by him to the General Manager's Table.

10. In this connection. I may also mention here one more point relating to the medical certificate alleged to have been anexed to the leave application. According to the version of CWs. 1 and 2 the original certificate, of which a copy purports to have been produced at Exhibit. C4, had been annexed to the saib leave application. The allegations in para 4 of the complaint petition are also to the same effect. This would naturally mean that the original medical certificate could not remain with the Complainant after the same is alleged to have been handed over to CW. 1. But strangely enough the Complainant has produced the original certificate in this respect at Ext. 65 on the date of his examination in this Tribunal on 21st September 1970. The contents of this certificate are exactly the same as those of Ext. C4, and this would go to show that the original certificate was with the Complainant himself all along, and as such the version of CWs. 1 and 2 about the original certificate having been handed over to CW. 1 cannot be taken as ture and acceptable. When a question was put to CW 2 (Complainant) in his cross examination for explaining as to how the original celtificate was with him, he replied that he had obtained Ext. C5 as an extra copy for being kept with him, and he had obtained it on fhe same occasion on which the one sent with CW. 1 was obtained. But if we look to Ext. C5 it would appear that there is nothing therein to indicate that it was only an extra copy, and it looks like the original certificate itself. Movreover, it is very unlikely that the Hospital Authorities should issue an Extra Copy of a certificate issued by them for being retained with the party. If it all the person obtaining such certificate requires a spare copy he will have himself to get it prepared, and it would not normally be possible for the authorities issuing such certificate to issue two copies, one of which is intended to be used for official purposes and the other for being kept with the party for his personal use. In view of all these reasons I think it rather difficult to accept the explanation offered by the Complainant in this behalf. My conclusion in this respect is that Ext. C5 must be the only certificate issued by the Hospital Authorities, and it must

have been retained by the Complainant himself, and as such I cannot accept his contention to the effect that he had sent the original medical certificate with CW. 1 along with the alleged leave application, for being presented before the General Manager. This is also another important factor to be noted against the Complainant.

11. Regarding the leave application in question, it is stated by CW. 1 Syed Ahamed Pasha that the General Manager directed him to send it to the Head of the Department (Watch and Ward) as leave had not been recommended, and accordingly it was sent by him to the Watch and Ward Section He admits in his cross examination that when tappals are sent to the other sections from the General Manager's office they are entered in an outward Register, If that were so, the application in question ought to have been entered in that register when it is said to have been sent to the Watch and Ward Section. But strangely enough this perticular leave application was not entered in the out ward register when it is alleged to have been sent to the Watch and Ward Section, though the other leeave applications sent from the General Manager's office on that day had been entered therein, as admitted by him (CW. 1)in his cross examination. The fact that only this particular application was not entered in the outward Register throws a very great doubt on the question whether any such application was actually received by CW. 1 from CW. 2, and whether the same was first placed before the General Manager, and then sent to the Watch and ward Section as directed by him (General Manager). This suspicious circumstance coupled with the other material circumstances discussed in the previous paras may lead to an inference that such an application may not at all have been received by CW. 1 from CW. 2 and it is quite possible that the story in this respect might have been concocted by these persons with a view to help the Complainant. I may further mention here that CW. 1 also admits in his cross examination that the Complainant belongs to Mandya (to which CW. 1 also belongs) and he knows him (Complainant) well. This admission on his part coupled with the fact that he (CW. 1) has tried to take some unusual interest in this case, are other important factors which would support the inference drawn by me above.

12. I may also mention here one more circumstance in connection with the leave alleged to have been taken by the Complainant from 14th May 1970 to 18th May 1970 as it would

go to show that he (Complainant) is capable of twisting facts to suit his own convenience. According to his version, he had taken leave on those dates as he was suffering from chest pain. But the leave application at Ext 03 given by him in this respect does not at all mention anything about his illness, much less about his having been suffering from chest pain. The ground for leave mentioned therein is that his younger brother had been admitted to the Mission Hospital, and he (Complainant) was required to attend to him, and hence leave should be granted. Though we are not directly concerned in this case with the leave alleged to have been taken from 14th May 1970 to 18th May 1970. I have mentioned about the same here just with a view to show that he (Complainant) is capable of twisting and exaggerating facts to suit his own convenience. This may show the possibility of his having conecoted a similar story regarding his alleged illness and about the sending of leave application, etc., for the period from 20th May 1970 onwards.

13. In this connection, I may lastly mention here that if at all the Complainant was ill from 20th May 1970 onwards he ought to have sent a leave application on that very day and there is no satisfactory explanation on his behalf for a delay of 5 days in this behalf. He has no doubt tried to explain by stating that he could not send the application on 20th May 1970 itself as he was not even able to speak on that day. But I think it rather difficult to accept his explanation in this respect as his alleged illness does not appear to be of a very serious nature, as he is alleged to have been suffering only from Acute Bronchitis, and further as he is stated to have been treated only as an out patient by some tablets being given and he is also said to have gone to the hospital only on 2 days *i.e.* on 20th May 1970 and 25th May 1970. Under these circumstances, I think that there was no objection for him to send a leave application on 20th May 1970 itself either by post or otherwise, if he was really suffering from some illness from that day onwards, and a delay of 5 days in this behalf throws some doubt on his *bona fides* and on the genuineness of his alleged illness.

14. In view of the above discussion my conclusion is that there is no satisfactory and reliable evidence on behalf of the Complainant in support of his contention to the effect that he had sent a leave application to the Management for the period from 20th May 1970 to 29th May 1970, and hence I answer this Issue in the negative,

15. Issues Nos. 1, 2, 4 and 5.—I will now deal with these issues together as they are connected with one another. The Opposite Party Management contends that the services of the Complainant were automatically terminated as per Standing Order No. 14(3) as he had absented himself unauthorisedly for a period of more than 8 days from 20th May 1970 onwards, and hence it has issued a memo to him about the same on 28th May 1970. The original memo in this respect has been produced by the Complainant at Ext. C2, and a copy thereof has been produced by the Opposite Party at Ext 02. The contention of the Management is that the action by it in this behalf would be perfectly legal and justified, as per Standing Order No. 14 (3). The contention of the Complainant on the other hand, is that the action taken by the Management against him was illegal, arbitrary and against the principles of natural justice, as no such action can be taken without issuing any notice and also without holding an enquiry about the same. We have therefore, to see as to which of these conflicting version should be accepted after considering about the evidence on record and also the provisions of law applicable to the same.

16. In support of its contention in this respect, the Opposite Party-Management mainly relies upon the provisions of Standing Order No. 14 (3), and also on the Rulings reported in 1967 (II) L.L.J. p. 883 (National Engineering Co., Ltd,, *vs.* Hanuman), 1969 (I) L.L.J. p. 133 (Pure Kustorie Colliery *vs.* Khan Mazdoor Congress and others) and 1963 (II) L.L.J. p. 638 (Buckingham and Carnatic Co.; *vs.* Venkatayya). The Standing Order No. 14(3) of the Opposite Party Management provides as follows:—

> "If a workman remains absent without leave, he shall lose his lien on his appointment unless he (a) returns within eight days from the date he absents himself, and (b) explains to the satisfaction of the Managing Director or the officer authorised by him the reasons for his absense and his inability to follow the prescribed procedure of obtaining leave of absence."

The wording of this Standing Order would go to show that if a workman absents himself without leave he shall lose his lien on appointment unless he returns within 8 days and explains to the Management the reasons for his absence and his inability to follow the prescribed procedure for obtaining leave of absence. The wording of this Standing Order would show that the workman should fulfil both the conditions mentioned therein, *i.e.*, he must

not only return within 8 days from the date he absents himself, but he must also explain to the Management the reasons for his absence and his inability to follow the prescribed procedure of obtaining leave of absence. Even if he is not able to fulfil any one of the two conditions, he would lose his lien on the appointment.

17. I will then come to the Ruling of the Supreme Court reported in 1967 (II) L.L.J. p. 883 (National Engineering Industries Ltd., *vs.* Hanuman), in which it has been laid down that when the Standing Order of the Company provides that a workman would lose his lien on his appointment in case he does not join duty within 8 days of the expiry of his leave, it obviously means that his services are automatically terminated on the happening of that contingency. In that case the workman Hanuman had taken leave from 3rd April 1965 to 9th April 1965, and he should have joined duty on 10th April 1965. But he did not join duty on that date, and his case was that he had sent a medical certificate through one Pralhad Singh on 10th April 1965, and he was given fitness certificate from 19th April 1965, and he wanted to join duty on 20th April 1965. He was not allowed to join duty on that date on the ground that his service stood automatically terminated. Thereafter he gave an application under Sec. 33-A of the I. D. Act. for reinstatement. The Management contended that the medical certificate alleged to have been sent through Pralhad Singh had not been received. The Labour Court accepted the contention of the workman to the effect that he had continued ill from 10th April 1965 to 19th April 1965, and he had sent a certificate through Pralhad Singh on 10th April 1965 and that the termination of his services without enquiry amounted to a denial of natural justice, and hence it ordered his reinstatement with back wages. In the Appeal to the Supreme Court it was held that the finding of the Labour Court that Hanuman continued ill from 10th to 19th April 1965 was perverse and could not be accepted. It was further held that as the Standing Orders of the company provided that the workman would lose his lien on his appointment in case he does not join duty within 8 days of the expiry of his leave, it would obviously mean that his services were automatically terminated on the happening of that contingency. The only difference between Standing Order No. 14(3) of the Opposite Party, and that of the Appellent Company concerned in the said Ruling, is that in the former there is absolutely no mention about the workman proceeding on leave and then absenting himself, while in the latter there is a mention about his

(workman's) absenting himself from duty after the expiry of sanctioned leave. But I think that it would not make any difference in applying the principle laid down in the said Ruling to the facts of the present case, particularly as both the Standing Orders provide for automatic termination of lien on appointment on the workman absenting himself unauthorisedly for a period of 8 days, and also for his inability to explain about the same to the satisfaction of the Management, and further as we are not concerned in the present case with the workman's having proceeded on leave in the first instance, and then absented himself from duty. Moreover, the workman in that case had contended that he had sent a medical certificate through one Pralhad Singh, and that contention, though accepted in the Labour Court was not ultimately accepted in the Supreme Court. In the present case also the Complainant's contention is that he had sent a leave letter with a medical certificate through CW-1 Syed Ahamed Pasha, and the same has not been accepted by me for the reasons already given above. In view of all these reasons I see no objection to apply the principle laid down in the said Ruling to the present case.

18. The principle laid down in 1969 (I) L. L. J. P. 133 (Pure Kastorie Colliery *vs.* Khan Mazdoor Congress and others) is almost to the same effect. The Ruling of the Supreme Court in 1967 (II) L. L. J. P. 883 has been relied upon therein and Standing Order No. 11 of that company provided that if an employee absents beyond the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless he returns within 8 days of the expiry of leave, and gives an explanation to the satisfaction of the Manager of his inability to come in time, and in case he loses his lien he shall be entitled to be kept on badli list. In that case the workman did not join duty within the period allowed by the Management, and hence it issued a letter to him to the effect that he had lost his liew on the appointment and that his name had been kept on the badli list according to the said Standing Order. The Industrial Tribunal directed that he should be reinstated in his permanent post with back wages on the ground that the Management could not pass such an order without giving him an opportunity of being heard. But It was held in the High Court that as per Standing Order No. 11 the employee must lose his lien on the appointment unless he returns within 8 days of the leave and having returned within that time explains to the satisfaction

of the Manager of his inability to return in time, and that the two requirements of Standing Order No. 11 were not disjunctive. Though it is true that the Standing Order concerned in this Ruling is slightly different from the one concerned in the present case, I think that the principle laid down therein can as well be made applicable to the present case, as the ratio thereof is to the effect that when a Standing Order of the factory fixes a particular maximum period and condition for the return of a workman to duty after his unauthorised absence, and on his failure to comply with those conditions within the fixed period, he would lose his lien on the appointment held by him. In the present case. the Complainant did not appear before the Management within the prescribed maximum period of 8 days from 20th May 1970, and explain before it that he was justified in absenting himself from work, and as such it cannot be said that the memo at Ext. C 5 issued by the Management to him cannot be said to be illegal or improper.

19. As Standing Order No. 14 (3) of the Opposite Party provides for, the termination of the lien on appointment of the workman on his absenting himself from duty and on his inability to appear within 8 days and to explain satisfactorily about the same, and further as the Complainant, in this case, is guilty of such a default, I think that he would be liable to have his lien on appointment terminated.

20. The principle laid down in the Ruling in 1963 (II) L. L. J. P. 638 (Buckingham and Carnatic Co., *vs.* Venkataiyya), which has been relied upon in 1967 (II) L. L. J. P. 883, is also to the same effect. Though it was a case under Sec. 73 of the E. S.I- Act the observations made and the principle laid down therein would have some hearing on the facts of this case as the main question involved there was almost similar to the one involved here. The Standing Order of the company concerned in that case provided that any employee who absents himself for 8 consecutive working days without leave, shall be deemed to hove left the company's service without notice thereby terminating his contract of service. In view of this Standing Order, it washeld that the provisions of Section 73 of the E.S.I. Act were not applicable. Though the question involved in that case was under the E.S.I. Act I think that the observations made and the principle laid down therein would have some bearing this case, as the relevant Standing Order [S.O. No. 14 (3)] of the company concerned here is almost similar to the one involved therein.

21. As against these decisions relied upon by the Opposite Party, Sri N. L Nagappa for the Complainant relied upon the Rulings reported in 1958 (I) L.L.J. p. 260 (Indian Iron and Steel Company *vs.* their workmen), 1962 (II) L. L. J. p. 220 (Express News Paper *vs.* Michael Mark and others) and 1951 (II) L. L. J. p. 314 (Buckingham and Carnatic Mills Ltd., *vs.* their workmen). In the Ruling reported in 1958 (I) L. L. J. p. 260 the Standing Orders provided for a discharge of workman remaining absent without permission for 14 consecutive days. Some of the workmen who had been taken in police custody in connection with a criminal prosecution applied for leave which was refused by the Management, and their services were terminated. The Appellate Tribunal had ordered their reinstatement on the ground that they had been discharged without charge or notice or enquiry. This order was set aside in the Supeme Court on the ground that the company was not bound to grant leave to the workmen even though they might have been arrested by the police as it would be almost impossible to grant leave when a large number of workmen proceed on leave, as thereby its work would be paralysed In the case of two of the employees who were seriously ill, they had been ordered to be reinstated and the Supreme Court did not interfere with that finding. I do not think that this Ruling can be of any great help to the Complainant. It could have been of some help to him if there were satisfactory evidence on his behalf regarding his alleged illness, and if he had satisfied the Management about the same within the prescribed period of 8 days. But that is not the case here. So I think that this Ruling cannot be of any great help to the Complainant.

22. In the Ruling reported in 1962 (II) L.L.J. p. 220 also the main question involved was quite different from the one involved in the present case. In that case, the Standing Orders of the Management provided for termination of service of an employee by one month's notice or on payment of one month's wages in lieu of Notice. The workmen in the factory went on strike for getting their demands accepted by the Management. They did not resume work in spite of repeated notices by the Management. Ultimately the employer issued notice stating that in the event of failure on the part of the workmen to report for work before a particular day they shall be deemed to have left service voluntarily and on their own accord. Ultimately, the employer removed the names of the concerned workmen from the muster roll as their having left services on their own accord. Thereafter, the said employees filed

applications under the Payment of Wages Act claiming benefits payable to them as per Standing Orders. The employer contended that there was no termination of employment by him in the circumstances of the case, but it was a case of voluntary abandonment of service. It was held that the workmen cannot be deemed to have voluntarily abandoned service from the fact that they had gone on strike for enforcing their demands, and that the action of the Management amounted to terminating their employment without notice and hence they were entitled to wages as per Stanid-ing Orders. It is clear from the above stated facts that the man question involved in that Ruling was quite different from the one involved in the present case and as such it cannot be of any help to the Complainant.

23. As regards the Ruling in 1951 (II) L. L. J. p 314 (Buckingham and Carnatic Mills Ltd., *vs.* their workmen), which is a decision of the Labour Appellate Tribunal of India also I think that it cannot be of any great help to the Complainant as the main question involved there was quite different from the one involved in the present case. In that case, the Management had terminated the services of 32 employees on various grounds. The services of six of them had been terminated under Standing Order No. 5 for absence without leave for 8 consecutive days, and of 13 under Standing Order No. 10 which entitled the company to dismiss an operative without giving reason on 15 days' notice, and of 5 on the ground of misconduct. The Industrial Tribunal had set aside this order and had ordered for their reinstatement on the ground that no proper opportunity had been given to them. In the appeal preferred before the Labour Appellate Tribunal, this order was set aside except in the case of two of the employees one of whom could not attend duty due to illness and the other due to his detention by the police. This Ruling would have been of some help to the Complainant if he had been able to prove his contention about his illness, and about his having sent a leave letter as alleged by him. But he has not been able to substantiate his contention in this behalf in view of the finding recorded on Issue No. 1 above.

24. Sri N. L. Nagappa for the Complainant urged that the memo dated 28th May 1970 issued by the Opposite Party to him (Complainant) cannot be said to be legal and proper as it had been issued without issuing any Notice or without giving him any opportunity of being heard. In this connection he drew my attention to the provisions of S.O. No. 23 (v) of the Standing

Orders of the Opposite Party Management which provides that whenever any enquiry is to be held against any workman for any misconduct, he must be served with a charge sheet and also given an opportunity of being heard, and that as no such procedure was followed in this case the anctio taken by the Management against him (Complainant) cannot be said to be legal and. proper He also drew my attention to the decision of the Supreme Court in A. I. R. 1961 Supreme Court page 1170 (J. K. Cotton Spinning and weaving Mills Co. Ltd., vs. State of Uttar Pradesh) in which it has been laid down that whenever there is a conflict between a general and special provision the special provisions must prevail. This Ruling was relied upon by him to show the provisions of Standing Order No. 23 (v) must be followed even in cases falling within the purview of standing Order No. 14 (3) of the standing Orders. something could have been said in favour of this argument if were a case of holding a domestic enquiry against the Complainnt for any misconduct or decilection duty on his part and of inflict-ing some punishm ent on him for the same But that is not the case here. It has been held in the Rulings in 1967 (II)L.L.J.P.883 and 1969 (I) L.L.J P. 133, which have been relisd upon by the Opposite Party, and to which a reference has been already made, that whenever it is a question of passing an order against a workman about his having lost his lien on the appointment as a result of his unauthorised absence for a parti- cular number of days, as mentioned in the relevant Standing Ordar it would be a case of automatic termination of employment, and it would not be necessary ts issue any charge sheet or Notice to him and also to give him an opportunity or being heard about the same. In both of these Rulings the lower courtt (Industrinal Tribunal or Labour Court) had directed that the workman should be reinstated in his original post with back wages, etc, on the ground that the order passed by the Management could not be passed without giving him an opportunity of being heard. But these orders were set aside by the Supreme Court and by the High Court of Patna, respectly, on the ground that no such notice or opportunity of being heard would be necessary in cases of this kind, in which there would be an automatic termination of lien on the appointment held by the workman, on the condition mentioned in the concerned Standing Order being fulfilled. Even in the Rulings in 1958 (I) L.L.J. P. 260 and 1951 (II) L.L J. page 314, which have been relied upon on behalf of the Complainant, and which have been already discussed above, the lower courts had ordered for the reinstatement of the concerned workmen on the

ground that they had been dismissed or discharged from service without charge, notice or enquiry, and theee orders were set aside by the Supreme Court and by the Labour Appellate Tribunal respectively, excepting in the case of some of the employees who had got some justifying grounds for their absence from duty, as already stated above. In view of all these reasons. I cannot accept the contention of Sri N. L. Nagappa in this respect.

25. In view of tha above discussion, my conclusion is that the action of the Management against the Complainant cannot be said to be not in accordance with standing orders, and there is also no evidence to show that it violates the principles of natural justice and it would further appear that it is a case of automatic termination of lien on appointment under Standing Order No. 14 (3) as contended by the Opposite Party. So I answer Issue No. 1 to the effect that it is in accordance with standing orders, and Issue No. 2 in the negative and Issue No. 4 in the affirmative.

26. In view of the findings recorded above on Issues Nos. 1 to 4, the Complainant would not be entitled to any of the reliefs

sought, and the Complaint would be liable to be dismissed. Hence I pass the following Award :—

AWARD.

The Complaint is dismissed. No order as to costs.

S. T. KULKARNI
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.

26th November 1970.